would feel justified in drawing such an inference, I regret that the absence of any evidence as to other assets prevents my assuming as against the 2nd defendant inability to pay any judgment. For that reason, and that reason only, the claim on the alternative ground by the plaintiff must in my opinion fail.

As regards damages, the plaintiff has proved that for the period from 23rd April, 1958, to 31st August, 1958, a total of 129 days, he was unable to work as a rubber tapper. On the evidence I think it not unreasonable to fix his daily income at $4 per day. I see no reason why I should not accept the evidence regarding excessive tapping of the rubber trees. I have worked this period strictly in accordance with the medical evidence. There is, however, in addition clear evidence that the plaintiff actually did very little work for the next 78 days. He says that he tried but found himself unable to work. The medical evidence on the other hand is clear that medically there was nothing to stop him from working. It has however been accepted both medically and legally that litigation neurasthenia does in fact exist. There are many instances when in claims of this nature and workers compensation an allowance is made in respect thereof. I think it not unreasonable therefore to allow a further 20 days which should adequately cover this aspect. Under this heading the damage will be for 149 days at $4 per day, making $596.

As regards the claim for loss of earnings in respect of cooking, the evidence before me shows that the cooking ceased on or about the 31st July, 1958. The plaintiff is entitled under this heading to 3 months and 8 days at $112 per month, amounting to $366.

Under the next heading "Nourishment expenses whilst in hospital" the plaintiff claims $260 for 130 days at $2 per day. On the evidence before me I consider this claim unreasonable. However, considering the need for some extra nourishment in addition to the hospital diet, I think it not unreasonable to allow $100 under this heading.

As regards the claim for members of the plaintiff's family visiting the hospital, there is no evidence before me that the plaintiff actually reimbursed the members of his family, or alternatively that this was an expenditure that he had to meet, although in fact it may well be so. I do not think that there is sufficient evidence to warrant my drawing any inference that he must have met this expense for the members of his family. If there had been such evidence, then I would have, following the trend of recent English decisions, allowed something for, say, two or three visits per week.

Under the heading of special damages therefore I allow $1,062.

As regards general damages, there is the fact that the plaintiff suffered two major injuries, fracture of the left clavicle and fracture of the left tibia, with bruises and abrasions on many parts of the body. He was in hospital from the 23rd April to the 7th June, 1958, and was an out-patient up to the 23rd June, 1958. It seems to me not unreasonable to assess his damages for pain and suffering and loss of the usual amenities while he was in the hospital at $1,000. In addition he would have a permanent shortening of his leg about three-quarters of an inch. Although the Medical Officer expressed the view that the plaintiff's earning power would be decreased by 5 per cent, the facts of the case before me established no such less of earning power, but, even though he manages to earn the same money, it will not be so easy and he must suffer some discomfort in his work and his future enjoyment in life. I consider that a sum of $2,000 would adequately compensate the plaintiff for any future disability.

I therefore award special damage of $1,062 and General damage of $3,000, making a total of $4,062.

I have already assessed the degree of responsibility for the accident at 70 per cent against the 2nd defendant and 30 per cent against the plaintiff. Accordingly there will be judgment against both defendants in the sum of $2,843.40. The plaintiff is also entitled to costs against both defendants as taxed by the Assistant Registrar, Supreme Court, Muar.

Order accordingly.

Solicitors: *Sault, Keith Sellar & Co.; Cheang Lee & Ong; S. A. Lingam.*

PUBLIC PROSECUTOR v. CHOO TECK HENG

[A. Cr. J. (Ambrose J.) July 7, 1960]

[Singapore — Magistrate's Appeal No. 85A of 1960]

Road Traffic — Inconsiderate driving — Road Traffic Ordinance (Cap. 227), s.25(1) — Major road — Proof — Judicial notice — Right of way under Rule 12(1) of the Road Traffic Rules, 1950 — Failure to observe Highway Code — Charge — Wording of.

This was an appeal by the Public Prosecutor against an acquittal. The accused, a taxi-driver, was charged with inconsiderate driving under section 25(1) of the Road Traffic Ordinance (Cap. 227). It was alleged that he failed to give right of way at a certain junction to traffic proceeding on a main road and thereby collided with two motor cars. He was acquitted without being called upon to enter upon his defence.

The Magistrate refused to take judicial notice that Mountbatten Road is a major road.

In the Magistrate's view, the driver of the motor car proceeding along Mountbatten Road had himself contravened rule 12(1) of the Road Traffic Rules, 1950, by not giving way at an uncontrolled intersection to the accused's taxi, which was approaching his front from his right or off side.

Held: (1) there was sufficient evidence to establish that Mountbatten Road is a major road: in any event, the fact that Mountbatten Road is a major road was too notorious to require proof;

(2) the right of way under rule 12(1) of the Road Traffic Rules, 1950, was not absolute, but had to be exercised subject to the statutory duty to drive with reasonable consideration for other road users;

(3) failure to observe rule 23 of the Highway Code may be relied upon as tending to establish lack of reasonable consideration for other road users.

Appeal allowed. Order of acquittal set aside. Case remitted to the Magistrate's Court with a direction that the accused be called upon to enter upon his defence.

Cases cited in argument:—

(1) *McNair* v. *Glasgow Corporation* [1923] S.C. 397.
(2) *Macandrew* v. *Tillard* [1909] S.C. 78.
(3) *Lang* v. *London Transport Executive* [1959] 3 All E.R. 609.
(4) *Carter* v. *Vadeboncoeur*, 66 D.L.R. 118.
(5) *Hanley* v. *Hayes* [1925] 3 D.L.R. 782.
(6) *Heard* v. *Erzinger* [1938] 2 D.L.R. 655.
(7) *Venables* v. *Garbutt* [1952] 2 D.L.R. 196.
(8) *Connor* v. *Blakeney* [1953] 2 D.L.R. 586.

MAGISTRATE'S APPEAL.

Goh Heng Leong (Deputy Public Prosecutor) for the appellant.

T. S. Tan for the respondent.

Ambrose J.: This was an appeal by the Public Prosecutor against an acquittal by a Magistrate. The acquittal followed a finding that no case against the accused had been made out by the prosecution which, if unrebutted, would warrant his conviction.

The accused was charged with inconsiderate driving, an offence against section 25(1) of the Road Traffic Ordinance (Cap. 227). It was alleged that at 8.30 p.m. on the 3rd June, 1959, at the junction of Crescent Road and Mountbatten Road he drove motor taxi SH. 3540 in an inconsiderate manner by failing to give right of way to traffic proceeding on a main road and thereby colliding with motor cars SC. 2692 and SC. 4389.

Mountbatten Road and Crescent Road intersect each other at right angles, the former running east and west, the latter running north and south.

The evidence of Mrs. Una Wilson was to this effect. At 8.30 p.m. on the day in question she was driving motor car SC. 4389 along Crescent Road from the north towards the intersection. She saw a taxi coming very fast from the opposite direction. She slowed down. The taxi did not stop or slow down at the intersection. It collided with a motor car, which was travelling along Mountbatten Road and across the intersection towards the east at a speed of about 25 miles per hour.

Sip Lim Yam, the driver of motor car SC. 2692, which was knocked into by the taxi, testified that he saw the taxi coming out of Crescent Road. It swerved to the right in front of his motor car and then swerved back. He applied his brakes but could not avoid colliding with the taxi. The front off-side corner of his motor car struck the near-side door of the taxi. The taxi overturned and collided with motor car SC. 4389.

The first reason given by the Magistrate for his finding was that there was a conflict of evidence between Mrs. Wilson and Sip: Mrs. Wilson said that the taxi collided with Sip's motor car, and Sip said that his motor car collided with the taxi. It seemed to me that there was no real conflict of evidence. Furthermore, the question which the Magistrate had to decide was whether the accused had driven his taxi without reasonable consideration for other persons using a major road.

The second reason for the Magistrate's finding was that there was no sign in Crescent Road south of the cross roads to indicate to vehicles moving north that they were approaching a main road; and that he was, therefore, not prepared to take judicial notice that Mountbatten Road is a main road. According to the evidence of Sergeant Abu Bakar, Mountbatten Road is 36 feet wide and Crescent Road 18 feet 4 inches wide, and there is a "HALT AT MAJOR ROAD AHEAD" sign north of the cross roads. To my mind there was sufficient evidence to establish that Mountbatten Road is a major road. In any event, the fact that Mountbatten Road is a major road is, in my opinion, too notorious to require proof.

The third reason for the Magistrate's finding was that Sip himself had contravened Rule 12(1) of the Road Traffic Rules, 1950. This rule provides as follows:

> "The driver . . . . of any vehicle arriving at an uncontrolled intersection or junction of roads . . . . . shall give way to any vehicle approaching his front from his right or off side."

It was not disputed by the Deputy Public Prosecutor that the intersection was uncontrolled. In my opinion, whether Sip had contravened Rule 12(1) or not, the question before the Magistrate was: did the accused drive his taxi without reasonable consideration for other persons using Mountbatten Road? The accused's right of way under Rule 12(1) was not an absolute right to proceed. It had to be exercised subject to his statutory duty to drive with reasonable consideration for other road users. As regards consideration for others, the Highway Code (1950 Supplement to the Laws of the Colony of Singapore, Vol. II, page 355) affords valuable guidance, consideration for others being its keynote. Although failure to observe any provision of the Highway Code does not of itself render a person liable to criminal proceedings, it may be relied upon as tending to establish liability in any proceedings. Rule 23 of the Highway Code reads:

> "Take special care at cross roads . . . . Give way to traffic on the major road. At uncontrolled crossings, unless you have a clear view of the major road in both directions, stop before entering the major road."

The evidence for the prosecution was that the accused approached the cross roads at a fast speed and that he did not stop or slow down at the cross roads. That showed lack of reasonable consideration for motor cars travelling along Mountbatten Road. The accused had to show special care at the cross roads. That involved looking right, looking left, then looking right again and making sure that it was safe to go on before proceeding. If the accused had done so, he would have noticed that Mountbatten Road was twice as wide as Crescent Road and come to realize that it was a major road. He would also have noticed motor car SC. 2692 and would have had to show reasonable consideration to Sip who

was driving it along a major road by giving way to him. If he did not have a clear view of Mountbatten Road in both directions, he should have shown reasonable consideration for traffic in Mountbatten Road by stopping before entering Mountbatten Road.

For the above reasons I held that there was, in my judgment, sufficient evidence for the Magistrate to call upon the accused to enter upon his defence. I accordingly set aside the order of acquittal and remitted the case to the Magistrate's Court with a direction that the Magistrate call upon the accused to enter upon his defence. I must add that a charge under section 25(1) of the Road Traffic Ordinance should follow the wording of the section closely and should contain the words "without reasonable consideration for other persons using the road".

Appeal allowed. Order of acquittal set aside.

Solicitors: *Allen & Gledhill.*

MUNUSAMY v. THE PUBLIC SERVICES COMMISSION

[O. C. J. (Ong J.) May 3, 1960]

[K. L. — Originating Motions Nos. 2 and 3 of 1959]

Constitutional Law — Public services — Restriction on dismissal and reduction in rank — Reversion not amounting to reduction in rank — Constitution of the Federation of Malaya, Art. 135 — Certiorari.

Specific Relief — Mandamus — Specific Relief (Malay States) Ordinance, 1950, s.44.

Reversion from a probationary appointment to a formerly held substantive post does not amount to reduction in rank within the meaning of Article 135 of the Federation of Malaya Constitution.

Semble: *Certiorari* will lie to quash an order infringing Article 135(2).

Cases referred to:—

(1) *High Commissioner for India* v. *I. M. Lall* A.I.R. 1948 P.C. 121, 124-7.
(2) *Shyamlal* v. *State of Uttar Pradesh & Anor.* A.I.R. 1954 S.C. 369, 374; [1955] 1 S.C.R. 26; [1954] S.C.J. 493.
(3) *Satish Chandra Anand* v. *Union of India* A.I.R. 1953 S.C. 250; [1953] S.C.R. 655.
(4) *Gopi Kishore Prasad* v. *State of Bihar* A.I.R. 1955 Patna 372.
(5) *M. V. Vichoray* v. *State of Madhya Pradesh* A.I.R. 1952 Nag. 288.
(6) *Rabindra Nath Das* v. *General Manager, Eastern Railway & Ors.* (1955) 59 C.W.N. 859.
(7) *Kader Nath Agarwal* v. *State of Ajmeer* A.I.R. 1954 Ajm. 22.
(8) *Laxminarayan Chironjilal Bhargava* v. *Union of India* A.I.R. 1956 Nag. 113.

MOTIONS.

C. C. Rasa Ratnam for the applicant.

I. Talog Davies (Senior Federal Counsel) for the respondents.

Cur. Adv. Vult.

The facts and arguments appear sufficiently from the judgment below.

Ong J.: In these two motions the applicant moves the Court, first, for an order of *certiorari* to quash a decision of the respondents, the Public Services Commission, terminating with effect from May 23, 1958, the appointment of the applicant as a Probationary Assistant Passport Officer in the External Affairs Service of the Government of the Federation of Malaya and reverting him to his previous post of Immigration Officer; secondly, for an order in the nature of a *mandamus*, under section 44 of the Specific Relief (Malay States) Ordinance, 1950, requiring the respondents to re-instate the applicant as an Assistant Passport Officer in the said External Affairs Service on probation.

At the commencement of the hearing I made an order, with the agreement of counsel, for consolidation of the two motions. I referred Federal Counsel also to the affidavit of the Secretary to the Public Services Commission, filed only in Originating Motion No. 2 of 1959, which confined itself to submissions of law under the Specific Relief Ordinance, but disputed no allegation of fact in the applicant's statement and affidavit. Federal Counsel stated that the averments of fact by the applicant are not challenged, but only the conclusions to be drawn therefrom.

The facts of this case may now be set out. On February 19, 1957, an advertisement in the *Malay Mail* newspaper invited applications for posts of Assistant Passport Officer for service in Federation of Malaya Government Oversea Missions. The relevant portion reads:

"Applicants will be selected according to the following order of preference: (1) Serving Assistant Passport Officers and Junior Assistant Passport Officers in the Immigration Department who have had not less than 5 years' service and possess School Certificate. (ii) All serving Government Officers who have had 5 years' service and who possess School Certificate."

At that date the applicant was a serving Government Officer who had had more than 5 years' service as an Immigration Officer, and, as such, subject to requisite qualifications, his application had to be dealt with under the second category. As regards his educational qualifications he held a "Leaving Certificate" from his school, the Methodist Boys' School, Kuala Lumpur, which states, *inter alia*:

"Standard at time of leaving: School Certificate Class (Camb.)

Reason for leaving: Graduated.

Remarks: He represented the School in football (4 years), cricket (4 years), and Hockey. Captain of School Cricket Team and Combined Schools Team. Has represented State in Cricket. Very good sportsman and athlete. A good leader".

It is not in dispute that other advertisements appearing from time to time, inviting applications for Federal Government vacancies or study leave scholarships were couched in more precise terms as to the type of School Certificate required to qualify.

In his letter of application dated February 21, 1957, the applicant wrote: